
UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF TEXAS

JESUS ALVAREZ, #64954-097

§

versus

§

UNITED STATES OF AMERICA

§

CIVIL ACTION NO. 4:15-CV-164
CRIMINAL ACTION NO. 4:12-CR-96(1)

ORDER OF DISMISSAL

This civil action was referred to United States Magistrate Judge Don D. Bush. The Report and Recommendation of the Magistrate Judge, which contains proposed findings of fact and recommendations for the disposition of such action, has been presented for consideration. The Government filed objections to the recommendation that Movant should be afforded an out-of-time appeal pursuant to *United States v. Tapp*, 491 F.3d 263 (5th Cir. 2007), but these are without merit. Having conducted a *de novo* review and considered the Government's objections, the Court is of the opinion that the findings and conclusions of the Magistrate Judge are correct, and adopts the same as the findings and conclusions of the Court. It is accordingly

ORDERED that Movant be allowed to file an out-of-time appeal, and that his Motion to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody (#1) pursuant to 28 U.S.C. § 2255 is **DISMISSED** without prejudice. It is also

ORDERED that the Clerk shall reinstate the judgment of conviction in Movant's criminal case on the docket of that cause. The Clerk shall re-enter the original judgment of conviction in the criminal case as of the date of entry of the final judgment in this § 2255 proceeding. Movant shall have fourteen days from the date of reinstatement of the judgment of conviction in which to file a notice of appeal or motion under Rule 4(b)(4), Fed. R. App. Pro. It is finally

ORDERED that all motions by either party not previously ruled on are hereby **DENIED** and a certificate of appealability is **DENIED**.

SIGNED at Beaumont, Texas, this 24th day of March, 2016.

Marcia A. Crone

MARCIA A. CRONE
UNITED STATES DISTRICT JUDGE